Mid-Con Cables, Inc. *and* District No. 174, International Association of Machinists and Aerospace Workers, AFL-CIO. Case 17-CA-10742

May 28, 1982

DECISION AND ORDER

BY MEMBERS FANNING, JENKINS, AND ZIMMERMAN

Upon a charge filed on December 2, 1981, by District No. 174, International Association of Machinists and Aerospace Workers, AFL-CIO, herein called the Union, and duly served on Mid-Con Cables, Inc., herein called Respondent, the General Counsel of the National Labor Relations Board, by the Regional Director for Region 17, issued a complaint on February 8, 1982, against Respondent, alleging that Respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the National Labor Relations Act, as amended. Copies of the charge and complaint and notice of hearing before an administrative law judge were duly served on the parties to this proceeding.

With respect to the unfair labor practices, the complaint alleges in substance that on November 12, 1981, following a Board election in Case 17-RC-9075, the Union was duly certified as the exclusive collective-bargaining representative of Respondent's employees in the unit found appropriate;[1] and that, commencing on or about November 24, 1981, and at all times thereafter, Respondent has refused, and continues to date to refuse, to bargain collectively with the Union as the exclusive bargaining representative, although the Union has requested and is requesting it to do so. On February 18, 1982, Respondent filed its answer to the complaint admitting in part, and denying in part, the allegations in the complaint.

On March 4, 1982, counsel for the General Counsel filed directly with the Board a Motion for Summary Judgment. Subsequently, on March 8, 1982, the Board issued an order transferring the proceeding to the Board and a Notice To Show Cause why the General Counsel's Motion for Summary Judgment should not be granted. Respondent thereafter filed a response to the Notice To Show Cause.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Upon the entire record in this proceeding, the Board makes the following:

Ruling on the Motion for Summary Judgment

Respondent's answer admits the Union's request and its refusal to bargain and to furnish information which is necessary and relevant to the Union's role as exclusive bargaining representative, but, in substance, attacks the validity of the Union's certification on the basis of its objections to the election in the underlying representation proceeding.[2] The General Counsel argues that all material issues have been previously decided. We agree with the General Counsel.

Our review of the record herein, including the record in Case 17-RC-9075, reveals that on August 29, 1980, pursuant to a Stipulation for Certification Upon Consent Election, an election was held among the employees in the stipulated unit. The tally of ballots shows that of approximately 147 eligible voters, 78 cast valid ballots for, and 59 against, the Union; there were 2 challenged ballots, an insufficient number to affect the results of the election. After conducting a hearing on Respondent's objections, the Hearing Officer, on October 24, 1980, issued his report recommending that the objections to the election be overruled. Thereafter, Respondent filed exceptions to the Hearing Officer's recommendation that its objections be overruled. On June 18, 1981, the Board remanded the proceeding to the Hearing Officer to reopen the hearing for the limited purpose of permitting Respondent an opportunity to cross-examine, or to call as its own witness, employee Diana Green.[3] Thereafter, the Hearing Officer reaffirmed his earlier report and, having considered testimony at the reopened hearing, issued a supplemental report on objections recommending that Respondent's objections be overruled. Respondent filed exceptions to the Hearing Officer's supplemental report. On November 12, 1981, the Board adopted the Hearing Officer's recommendation and certified the Union

[1] Official notice is taken of the record in the representation proceeding, Case 17-RC-9075, as the term "record" is defined in Secs. 102.68 and 102.69(g) of the Board's Rules and Regulations, Series 8, as amended. See *LTV Electrosystems, Inc.*, 166 NLRB 938 (1967), enfd. 388 F.2d 683 (4th Cir. 1968); *Golden Age Beverage Co.*, 167 NLRB 151 (1967), enfd. 415 F.2d 26 (5th Cir. 1969); *Intertype Co.* v. *Penello*, 269 F.Supp. 573 (D.C.Va. 1967); *Follett Corp.*, 164 NLRB 378 (1967), enfd. 397 F.2d 91 (7th Cir. 1968); Sec. 9(d) of the NLRA, as amended.

[2] The record reveals that by letters dated November 17, 1981, and November 23, 1981, the Union requested Respondent to recognize it and bargain with it as the collective-bargaining representative of Respondent's employees and to furnish it with certain information relating to wages and terms and conditions of employment. By return letter dated November 24, 1981, Respondent acknowledged receipt of the Union's bargaining demand and stated that "[i]t is inappropriate for us to plan on any bargaining at this time, or to consider your other requests for detailed information about Mid-Con employees."

[3] 256 NLRB 720 (1981).

as the exclusive bargaining representative of the employees in the stipulated unit.

It is well settled that in the absence of newly discovered or previously unavailable evidence or special circumstances a respondent in a proceeding alleging a violation of Section 8(a)(5) is not entitled to relitigate issues which were or could have been litigated in a prior representation proceeding.[4]

All issues raised by Respondent in this proceeding were or could have been litigated in the prior representation proceeding, and Respondent does not offer to adduce at a hearing any newly discovered or previously unavailable evidence, nor does it allege that any special circumstances exist herein which would require the Board to reexamine the decision made in the representation proceeding. Further, there are no factual issues regarding the Union's request for information since Respondent, by its letter of November 24, 1981, admitted that it refused to furnish the Union with such information. We therefore find that Respondent has not raised any issue which is properly litigable in this unfair labor practice proceeding. Accordingly, we grant the Motion for Summary Judgment.

On the basis of the entire record, the Board makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF RESPONDENT

Respondent is, and has been at all times material herein, a California corporation, with an office and place of business located at Joplin, Missouri, where it is engaged in the manufacture of telephone switching equipment. Respondent annually purchases goods and services valued in excess $50,000 directly from sources located outside the State of Missouri.

We find, on the basis of the foregoing, that Respondent is, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act, and that it will effectuate the policies of the Act to assert jurisdiction herein.

II. THE LABOR ORGANIZATION INVOLVED

District No. 174, International Association of Machinists and Aerospace Workers, AFL–CIO, is a labor organization within the meaning of Section 2(5) of the Act.

III. THE UNFAIR LABOR PRACTICES

A. *The Representation Proceeding*

1. The unit

The following employees of Respondent constitute a unit appropriate for collective-bargaining purposes within the meaning of Section 9(b) of the Act:

> All production and maintenance employees employed by Mid-Con Cables, Inc. at their Joplin, Missouri facility located at 2500 Davis Boulevard, including quality control and shipping and receiving employees, but excluding office clerical employees, all salaried employees of the quality control, shipping and receiving and engineering departments, professional employees, guards and supervisors as defined in the Act.

2. The certification

On August 29, 1980, a majority of the employees of Respondent in said unit, in a secret-ballot election conducted under the supervision of the Regional Director for Region 17, designated the Union as their representative for the purpose of collective bargaining with Respondent.

The Union was certified as the collective-bargaining representative of the employees in said unit on November 12, 1981, and the Union continues to be such exclusive representative within the meaning of Section 9(a) of the Act.

B. *The Request To Bargain and Respondent's Refusal*

Commencing on or about November 17, 1981, and at all times thereafter, the Union has requested Respondent to bargain collectively with it as the exclusive collective-bargaining representative of all the employees in the above-described unit. Commencing on or about November 24, 1981, and continuing at all times thereafter to date, Respondent has refused, and continues to refuse, to recognize and bargain with the Union as the exclusive representative for collective bargaining of all employees in said unit.

Accordingly, we find that Respondent has, since November 24, 1981, and at all times thereafter, refused to bargain collectively with the Union as the exclusive representative of the employees in the appropriate unit, and that, by such refusal, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act.

[4] See *Pittsburgh Plate Glass Co.* v. *N.L.R.B.*, 313 U.S. 146, 162 (1941); Rules and Regulations of the Board, Secs. 102.67(f) and 102.69(c).

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of Respondent, set forth in section III, above, occurring in connection with its operations described in section I, above, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. THE REMEDY

Having found that Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act, we shall order that it cease and desist therefrom, and, upon request, bargain collectively with the Union as the exclusive representative of all employees in the appropriate unit and, if an understanding is reached, embody such understanding in a signed agreement, and to provide the Union, upon request, information necessary for collective bargaining.

In order to insure that the employees in the appropriate unit will be accorded the services of their selected bargaining agent for the period provided by law, we shall construe the initial period of certification as beginning on the date Respondent commences to bargain in good faith with the Union as the recognized bargaining representative in the appropriate unit. See *Mar-Jac Poultry Company, Inc.*, 136 NLRB 785 (1962); *Commerce Company d/b/a Lamar Hotel*, 140 NLRB 226, 229 (1962), enfd. 328 F.2d 600 (5th Cir. 1964), cert. denied 379 U.S. 817; *Burnett Construction Company*, 149 NLRB 1419, 1421 (1964), enfd. 350 F.2d 57 (10th Cir. 1965).

The Board, upon the basis of the foregoing facts and the entire record, makes the following:

CONCLUSIONS OF LAW

1. Mid-Con Cables, Inc., is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. District No. 174, International Association of Machinists and Aerospace Workers, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

3. All production and maintenance employees employed by Mid-Con Cables, Inc. at their Joplin, Missouri facility located at 2500 Davis Boulevard, including quality control and shipping and receiving employees, but excluding office clerical employees, all salaried employees of the quality control, shipping and receiving and engineering departments, professional employees, guards and supervisors as defined in the Act, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

4. Since November 12, 1981, the above-named labor organization has been and now is the certified and exclusive representative of all employees in the aforesaid appropriate unit for the purpose of collective bargaining within the meaning of Section 9(a) of the Act.

5. By refusing on or about November 24, 1981, and at all times thereafter, to bargain collectively with the above-named labor organization as the exclusive bargaining representative of all the employees of Respondent in the appropriate unit, and to furnish the Union with information that is relevant and necessary to its role as the exclusive bargaining representative, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) of the Act.

6. By the aforesaid refusal to bargain, Respondent has interfered with, restrained, and coerced, and is interfering with, restraining, and coercing, employees in the exercise of the rights guaranteed them in Section 7 of the Act, and thereby has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

7. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, Mid-Con Cables, Inc., Joplin, Missouri, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively concerning rates of pay, wages, hours, and other terms and conditions of employment with District No. 174, International Association of Machinists and Aerospace Workers, AFL-CIO, as the exclusive bargaining representative of its employees in the following appropriate unit:

> All production and maintenance employees employed by Mid-Con Cables, Inc. at their Joplin, Missouri facility located at 2500 Davis Boulevard, including quality control and shipping and receiving employees, but excluding office clerical employees, all salaried employees of the quality control, shipping and receiving and engineering departments, professional employees, guards and supervisors as defined in the Act.

(b) Refusing to provide the above-named Union, upon request, information necessary for the purpose of collective bargaining.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them in Section 7 of the Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Upon request, bargain with the above-named labor organization as the exclusive representative of all employees in the aforesaid appropriate unit with respect to rates of pay, wages, hours, and other terms and conditions of employment and, if an understanding is reached, embody such understanding in a signed agreement, and provide the Union, upon request, information necessary for the purpose of collective bargaining.

(b) Post at its Joplin, Missouri, facility copies of the attached notice marked "Appendix."[5] Copies of said notice, on forms provided by the Regional Director for Region 17, after being duly signed by Respondent's representative, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to ensure that said notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director for Region 17, in writing, within 20 days from the date of this Order, what steps have been taken to comply herewith.

[5] In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant To a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

WE WILL NOT refuse to bargain collectively concerning rates of pay, wages, hours, and other terms and conditions of employment with District No. 174, International Association of Machinists and Aerospace Workers, AFL-CIO, as the exclusive representative of the employees in the bargaining unit described below.

WE WILL NOT refuse to provide the Union, upon request, information necessary for the purpose of collective bargaining.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL, upon request, bargain with the above-named Union, as the exclusive representative of all employees in the bargaining unit described below, with respect to rates of pay, wages, hours, and other terms and conditions of employment, and, if an understanding is reached, embody such understanding in a signed agreement. The bargaining unit is:

> All production and maintenance employees employed by Mid-Con Cables, Inc. at their Joplin, Missouri facility located at 2500 Davis Boulevard, including quality control and shipping and receiving employees, but excluding office clerical employees, all salaried employees of the quality control, shipping and receiving and engineering departments, professional employees, guards and supervisors as defined in the Act.

WE WILL, upon request, furnish the Union with the information it requested by letter dated November 17, 1981, which information is relevant and necessary to the Union's role as the exclusive bargaining representative of the employees in the bargaining unit described above.

MID-CON CABLES, INC.